

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3992 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and

MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed : NO to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO of the judgement?
4. Whether this case involves a substantial question : NO of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

DAHYABHAI AMBALAL PATEL

Versus

EXECUTIVE ENGINEER

Appearance:

MR AJ PATEL for Petitioner
Mr.Premal Joshi, learned A.G.P.
for the respondents.

CORAM : MR.JUSTICE M.R.CALLA and
MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 21/12/1999

ORAL JUDGEMENT(Per M.R.Calla,J)

This Appeal in the matter of land acquisition is directed against the judgment and award dt.28.11.97

passed by the learned Asst.Judge, Mehsana in Land Acquisition Reference No.765/90. The land concerned in this Appeal is situated in village Jaspur, Taluka Kalol. For the purpose of acquisition of the land in question, a Notification was issued under S.4 on 2.1.86 and the Notification under S.6 was then issued on 4.5.87 for the purpose of acquiring land for Narmada Yojana. On behalf of the claimant a demand for a sum of Rs.150/- per Sq.Mt.was made as compensation. However, the Land Acquisition Officer awarded compensation at the rate of Rs.3/- per Sq.Mt. by a common judgment and award dt.17.5.89. Against this award, References were made before the Court of Assistant Judge, Mehsana at Mehsana being Land Acquisition References Nos.765 to 767 of 1990,464/91 and main Land Acquisition Reference No.761/90. These References were decided by a common judgment by Assistant Judge, Mehsana on 28.11.97 whereby the claimants were allowed additional compensation of Rs.37/- per Sq.Mt. over and above the compensation, as had been granted by the Land Acquisition Officer at the rate of Rs.3/- per Sq.Mt. Thus making the rate, at which the compensation to be paid, as Rs.40/- per Sq.Mt.

Learned counsel for the appellant has submitted that in this Appeal the additional compensation has been claimed at the rate of Rs.32/- per Sq.Mt. i.e. Rs.40 + Rs.32 = Rs.72/- per Sq.Mt. He has further submitted that in respect of the land, which has been acquired by the same Notification on the same date with regard to the same village Jaspur in First Appeals Nos.5760 to 5763 of 1998, which were decided by a Division Bench of this Court on 7.7.99, while partly allowing the First Appeals, the compensation was granted at the rate of Rs.52/- per Sq.Mt. It has been further submitted by Mr.A.J.Patel that this judgment dt.7.7.99, in which the compensation was granted at the rate of Rs.52/- per Sq.Mt., was based on the earlier judgment dt.28.6.99 rendered by the Division Bench in First Appeals Nos.315 to 328 of 1998 and in those cases also the compensation was granted at the rate of Rs.52/- per sq.mt. It has been submitted that the land under acquisition in this Appeal is identically situated to the land, which was the subject matter of acquisition in earlier decisions in First Appeals Nos.315 to 328 of 1998 and First Appeals Nos.5760 to 5763 of 1998 decided on 28.6.99 and 7.7.99 respectively. Mr.Premal Joshi, learned A.G.P. has not contested this factual position with regard to the situation of the land concerned in this Appeal and as was concerned in other Appeals as have been referred to hereinabove. In this view of the matter,when the date of notification is same, the purpose of acquisition is same,

the land belongs to the same village and it is not disputed that the situation of the land is identical, this Appeal is allowed and the rate, at which the compensation has been granted by the Award dated 28.11.97, is enhanced and it is held that the rate at which the claimant shall be paid compensation will be Rs.52/- per Sq.Mt. The Award dated 28.11.97 stands modified accordingly. All other benefits which have been granted by the Reference Court shall be available to the claimant accordingly. This Appeal is partly allowed as above. No order as to costs.

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